

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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|---------------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA | : | CRIMINAL NO. 1:06-CR-0139 |
| | : | |
| v. | : | (Judge Conner) |
| | : | |
| KEVIN WILLIAM SMALL | : | |

ORDER

AND NOW, this 7th day of August, 2012, upon consideration of the motion for transcripts and discovery materials at no cost (Doc. 151), and the motion to proceed *in forma pauperis* (Doc. 152), filed by defendant Kevin William Small (“Small”), wherein Small requests that the court order the government to provide him with the discovery materials used at his trial and a copy of the trial transcript at no charge in order to complete his appeal to the United States Supreme Court, and it appearing that the direct appeal of the above-captioned matter came to a close on June 1, 2009, when the United States Supreme Court denied Small’s petition for writ of certiorari, see Kevin William Small v. United States, (No. 08-9981), and it further appearing that Small filed a motion to vacate, set aside or correct sentence (Doc. 130), pursuant to 28 U.S.C. § 2255, on June 1, 2010, and the court noting that, by memorandum and order (Doc. 146) dated August 9, 2011, the court denied Small’s motion and denied a certificate of appealability, and it appearing that on October 12, 2011, the United States Court of Appeals for the Third Circuit also denied Small’s request for a certificate of appealability, see United States v. Small, (No. 11-3292), and the court construing Small’s motions as requesting materials at the government’s expense to complete his appeal to the United States Supreme

Court of the denial of his motion to vacate, and the court finding that, in order for a defendant seeking post-conviction relief to be furnished with transcripts at the government's expense, the trial judge must certify that "the suit . . . is not frivolous and that the transcript is needed to decide the issue presented by the suit," 28 U.S.C. § 753(f); see also United States v. MacCollom, 426 U.S. 317, 320-21 (1976) (upholding § 753 as consistent with due process and equal protection), and the court concluding that the circumstances in the instant matter, namely the denial of Small's motion to vacate by this court and the denial of certificate of appealability by this court and the Third Circuit, do not warrant expending government resources to provide the requested trial transcripts and discovery material,¹ it is hereby ORDERED that:

1. The motion for transcripts and discovery materials at no cost (Doc. 151), and the motion to proceed *in forma pauperis* (Doc. 152) are DENIED.
2. Defendant is directed to contact the court reporter listed below to request his trial transcript. The cost of obtaining the transcript is to be paid by the defendant.

Wesley J. Armstrong, RMR
Official Court Reporter
U.S. District Court, Middle District of Pennsylvania
Attn: Clerk's Office, Room 1060
228 Walnut Street
Harrisburg, Pennsylvania 17108

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

¹ The court also notes the time-barred nature of any petition to the United States Supreme Court, as the Third Circuit denied Small's request for certificate of appealability on October 12, 2011.